

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Gordon A. Simmons
and Sieglinde K. Simmons,

Plaintiffs

v.

Civil Action No. 1:17-CV-00159-PB

Service Credit Union,

Defendant

**DEFENDANT'S MOTION TO DISMISS COUNT IV, DECLARATORY JUDGMENT
AND COUNTS V AND VI, BREACH OF CONTRACT**

Defendant SERVICE CREDIT UNION ("SCU"), by its attorneys, JACKSON LEWIS P.C. hereby moves to dismiss Count IV, Declaratory Judgment and Counts V and VI, Breach of Contract, in Plaintiffs' Amended Complaint, and in support states as follows:

1. On March 20, 2017, Plaintiffs filed a three count complaint against SCU in Rockingham County Superior Court requesting declaratory judgment that SCU was required to provide lifetime medical benefits to the Plaintiffs and that the refusal of SCU to provide the lifetime medical benefits was a breach of contract.

2. SCU removed the matter to the United States District Court for the District of New Hampshire stating the Plaintiffs' alleged causes of action arose under federal law, specifically, the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001, *et seq.*

3. On May 31, 2017, Plaintiffs' filed a Motion to Remand contending the Plaintiffs' claims did not relate to an "employee benefit plan" under ERISA and thus the state law claims were not preempted.

4. The parties full briefed the issue, including an objection, reply and oral argument, and this Court issued a March 12, 2018 Order denying the Motion to Remand.

5. The March 12, 2018 Order held the agreements between the parties, the President and CEO Employment Agreement and subsequent Addendum, constituted an employee benefit plan regulated by ERISA and thus the breach of contract and declaratory judgment claims were "completely preempted by ERISA." Order, p. 9. This Court ordered the Plaintiffs to "file an amended complaint restating his claims under ERISA." *Id.*

6. On April 16, 2018, the Plaintiffs filed an Amended Complaint. The Amended Complaint has 6 counts, 3 claims under ERISA, and the original state law claims for declaratory judgment and breach of contract.¹ The Plaintiffs stated in their Amended Complaint that they "re-state their state law counts, to preserve their argument that the controversy does not relate to an ERISA plan." *See* Amended Complaint, ECF No. 24.

7. As this Court stated in its March 12, 2018 Order, the Plaintiffs' state law claims are preempted by ERISA. The Plaintiffs' claims "derive from SCU's agreement to provide him with lifetime post-retirement medical coverage" and therefore the "claims clearly relate to that agreement." Order, p. 3. This Court's Order is consistent with settled law that ERISA supersedes "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan" 29 U.S.C. § 1144(a); *See Pilot Life v. Dedeaux*, 481 U.S. 41, 45 (1987).

¹ There are separate breach of contract claims for the two plaintiffs.

8. Based on this Court's March 12, 2018 Order, the Plaintiffs' claims for declaratory judgment and breach of contract should be dismissed as a matter of law.

MEMO STATEMENT, LR 7.1(a)(2)

No Memorandum of Law accompanies this motion. To the extent it relies on legal authority, such authority is cited herein.

WHEREFORE, Defendant respectfully requests that this Honorable Court:

- A. Dismiss Counts IV, V and VI of Plaintiffs' Amended Complaint; and
- B. Grant such other and further relief as is just and equitable.

Respectfully Submitted,
SERVICE CREDIT UNION,
By its attorneys,
JACKSON LEWIS P.C.,

Date: May 7, 2018

By: /s/Debra Weiss Ford
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Certificate of Service

I hereby certify that the foregoing was served via ECF on Paul McEachern, Esq., counsel for Plaintiffs.

Date: May 7, 2018

/s/Debra Weiss Ford
Debra Weiss Ford